

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOYOLA UNIVERSITY CHICAGO
Employer

and

Case 13-RC-168082

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 73, CLC/CTW
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Member Miscimarra, dissenting:

Contrary to my colleagues, I would grant Loyola University of Chicago's Request for Review of the Acting Regional Director's Decision and Direction of Election, in which the Acting Regional Director asserted jurisdiction over the University and directed an election in a unit of all full-time and part-time English Language Learning Program/ESL faculty and team members employed by the University. As explained in my dissenting opinion in *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 26-27 (2014), when determining whether a religious school or university is exempt from the Act's coverage based on First Amendment considerations, I would apply the three-part test articulated by the court in *University of Great*

¹ In denying review, we agree that the Acting Regional Director properly found that the Board has jurisdiction under *Pacific Lutheran University*, 361 NLRB No. 157 (2014). Our dissenting colleague asserts that, under *Pacific Lutheran University*, a substantial question exists regarding the specific role played by faculty and team members in providing students exposure to diverse viewpoints, which is an important aspect of a Jesuit education. We disagree. In *Pacific Lutheran University*, the Board stated that "requiring faculty members to comply with norms shared by both a religion and by wider society does not support a finding that faculty members are held out as performing any specific religious role." *Id.*, slip op. at 9. The Board continued, "Although we are not examining an institution's beliefs or practices, or questioning a university's religious identity, our examination of a university's public representations must show that it holds its faculty out as performing a specifically religious role, not a role that they would be expected to fill at virtually all universities." *Id.*

Falls v. NLRB, 278 F.3d 1335, 1343 (D.C. Cir. 2002). Under that test, the Board has no jurisdiction over faculty members at a school that (1) holds itself out to students, faculty and community as providing a religious educational environment; (2) is organized as a nonprofit; and (3) is affiliated with or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. *Id.* Loyola University has raised a substantial issue regarding whether it is exempt from the Act's coverage under that three-part test. As stipulated by the parties, the University holds itself out to the public as providing a religious educational environment. Additionally, the University is organized as a nonprofit, and it is affiliated with the Society of Jesus, a recognized religious organization. Accordingly, I would grant the University's request for review because I believe substantial questions exist regarding whether the Board lacks jurisdiction over the University as a religiously affiliated educational institution and whether the *Pacific Lutheran* standard is unconstitutional under the First Amendment.

Furthermore, even if one applies *Pacific Lutheran*, I would grant review because I believe there are substantial questions regarding whether Loyola University is an exempt religiously affiliated educational institution on the basis that (i) it holds itself out as providing a religious educational environment (which has been stipulated to by the parties), and (ii) individuals in the petitioned-for unit play a specific role in creating or maintaining the University's religious educational environment. As to this last question, I believe a substantial question exists regarding the specific role played by faculty and team members in providing students exposure to diverse viewpoints, which is an important aspect of a Jesuit education. See *Great Falls*, *supra*, 278 F.3d at 1346 ("That a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious."); *Pacific Lutheran University*, *supra*, slip op. at 31 (Member Johnson, dissenting) ("The majority also errs fundamentally here by assuming a false dichotomy between 'religious' and 'secular' instruction.").

For these reasons, I believe the Board should grant review and consider the merits of the jurisdictional and constitutional issues presented in this case.

PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., July 20, 2016.